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NIKOLAI & MERSEREAU, P.A. 900 SECOND AVENUE SOUTH SUITE 820 MINNEAPOLIS, MN 55402			FOREMAN, JONATHAN M	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEPHEN NUSS

Appeal 2008-2705
Application 09/760,136
Technology Center 3700

Decided: July 22, 2008

Before DONALD E. ADAMS, DEMETRA J. MILLS, and
ERIC GRIMES, *Administrative Patent Judges*.

ADAMS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal under 35 U.S.C. § 134 involves claims 12, 16-20 and 24-27, the only claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

INTRODUCTION

The claims are directed to an intravascular guidewire. Claim 20 is illustrative:

20. An intravascular guidewire adapted for insertion into the vascular system of a patient during the course of a catheterization procedure comprising a titanium molybdenum alloy wire having approximately between about 75 % and about 83 %[]titanium, between about 8 % and about 14 %[]molybdenum, between about 4 % and about 8 % zirconium and between about 2 % and about 6 % tin by weight, the wire having a diameter in a range of from 0.005 inch and 0.040 inch over a predetermined length dimension thereof, said wire having a proximal end portion and a distal end portion where the distal end portion is tapered to a lesser diameter than the diameter of the proximal end portion and terminates in a rounded distal tip.

The Examiner relies on the following prior art references to show unpatentability:

Chapman	US 4,776,330	Oct. 11, 1988
Cornish	US 6,132,389	Oct. 17, 2000

The rejection as presented by the Examiner is as follows:
Claims 12, 16-20 and 24-27 stand rejected under 35 U.S.C § 103(a) as unpatentable over the combination of Chapman and Cornish.

We reverse.

DISCUSSION

The Examiner presents two obviousness rejections for our review based on (1) Chapman in view of Cornish; and (2) Cornish in view of Chapman (Ans. 3 and 5). We consider both rejections collectively as based on the combination of Chapman and Cornish

The Examiner finds that Cornish fails to teach a guidewire comprising “a titanium molybdenum alloy wire having approximately 78% titanium, 11.5% molybdenum, 6 % zirconium and 4.5% tin by weight” (Ans. 5). The Examiner relies on Chapman to make up for this deficiency in Cornish (*id.*).

According to the Examiner, Chapman teaches “a guidewire . . . having approximately 78% titanium, 11.5% molybdenum, 6% zirconium and 4.5% tin by weight” (*id.*). We disagree.

As Appellant explains, “[n]owhere within the four corners of the ‘330 [(Chapman)] patent is there any indication that the guidewire . . . is fabricated from appellant’s claimed alloy” (Reply Br. 5). While Appellant agrees that Chapman teaches “that the components of the novel kit of the [Chapman’s] invention are made of the same alloy as is used in Appellant’s guidewire, nowhere in this patent is there any indication that the ‘kit’ includes a guidewire as one of its members” (Reply Br. 5-6). We agree.

We are not persuaded by the Examiner’s assertion that since Chapman’s “guidewire is left in place in the patient’s bone to form part of the implant. The Examiner has concluded that because the guidewire . . . forms a part of the implant, that it must be a part of the kit and therefore be formed of the resilient, physiologically inert titanium-based alloy” (Ans. 6). This assertion is not supported by the evidence of record. As Appellant

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explains, while Chapman's kit includes a number of components a guidewire is not disclosed by Chapman to be a component of the kit (Reply Br. 6; *see also* Chapman, col. 2, ll. 30-45). Thus, the evidence of record fails to support the Examiner's assertion.

Accordingly, we reverse the rejection of claims 12, 16-20, and 24-27 under 35 U.S.C § 103(a) as unpatentable over the combination of Chapman and Cornish.

CONCLUSION

In summary, we reverse the rejection of record.

AFFIRMED

clj

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